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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,958	12/18/2001	James O. Gilkerson	279.209US2	2116
21186	7590	12/22/2004		EXAMINER
		SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402		JASTRZAB, JEFFREY R
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/025,958	GILKERSON ET AL.
	Examiner Jeffrey R. Jastrzab	Art Unit 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) ____ is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. ____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

Claims 18-46 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/15/04.

Claim Rejections - 35 USC § 102

Claims 14 -16 stand rejected under 35 U.S.C. 102(e) as being anticipated by US 5,725,559 to Alt et al. as set forth in the previous office action of 6/25/04.

Applicants argue that they cannot find a clinical rhythm associated with one or more available detection enhancements in Alt et al. and state that restored functions cannot be characterized as a detection enhancement.

As stated before, Alt provides a programmer module that allows for selective upgrading of a pacer to include additional therapy regimens, such as anti-tachycardia pacing and defibrillation, which would amount to selecting a clinical rhythm, i.e. tachycardia or fibrillation. Since with these upgrades the pacer would now respond to those sensed arrhythmias to enable the function generator, the corresponding sensing upgrades would constitute detection enhancements for these arrhythmia which are "associated with these clinical rhythms" as claimed. The sensing of the upgraded arrhythmia would inherently call for a parameter upgrade, e.g. rate sensing threshold. Although the enhancements therein would be necessarily already present in the implant, only disabled, the claims do not call for sending the actual enhancements as

apparently argued by Applicants. Instead, only the “selection of the at least one detection enhancement” is received by the second module per Claim 14, based on a user selected rhythm (the type of arrhythmia as in Alt et al.). Alt clearly applies to sending a selection for detection changes so the implant can detect different maladies, therefore the rejection still apples and is hereby made FINAL.

Claim Rejections - 35 USC § 103

Claim 17 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Alt et al. in view of Nelms, US 4,323,074. Although it is believed to be intrinsically included in the Alt system, Alt et al. fail to specifically call for changing the value of a specific parameter, however, such techniques are notorious in the art as evidenced by Nelms, the only difference being that Nelms doesn't use a windows based, or layered, display system. In this regard, the Examiner takes official notice that windows based displays were well known in the programmer art at the time of the invention, the substitution of which, into the modified Alt et al. system, would have amounted to an obvious choice in design. The arguments that the specific screens are not provided for by Nelms et al. are not persuasive since, as stated above, layered windows programming screens are merely a design choice for parameter entry into the programming word at the external programmer. Such a modification to the Alt et al. device would lack patentable moment given the known adaptability of windows based computing at the time of the invention.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Jastrzab whose telephone number is (571)

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272*4947. The examiner can normally be reached on Monday - Wednesday 5:30a.m. to 4:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeffrey R. Jastrzab
Primary Examiner
Art Unit 3762
12/21/04